

REMARKS

The above-captioned patent application has been carefully reviewed in light of the final Office Action to which this Amendment is responsive. Claims 1, 4, 5, 8, 9, and 14 and 15 have been amended in an effort to further clarify and to distinctly point out that which is regarded as the present invention. Claims 2, 3 and 10-12 have been canceled. To that end, no new matter has been added.

Each of original Claims 1-15 have been rejected on the basis of certain prior art, most notably Babkes and Knieriem et al. In addition, the specification and drawings have also been objected to by the Examiner. Reconsideration of Claims 1, 4-9 and 13-15 is respectfully requested based on the claims, as amended herein and the following discussion.

Turning to the prior art rejections, Claims 1-12 have been rejected under 35 USC §102(a) as being anticipated by Babkes (U.S. Patent No. 6,634,789). Applicants herein respectfully traverse this rejection.

In order to successfully anticipate under the Patent Statute, each and every claimed limitation must be found or its equivalent in the single cited reference. Those limitations that are not found must be notoriously well known in the field to one of sufficient (e.g., ordinary) skill.

To that end, each limitation of the claim must be considered in applying a prior art reference.

Babkes '789 provides for a removable module which includes a receptacle for retaining a plurality of temperature probe covers as well as a probe well, and as indicated by the Examiner, further includes a cavity sized to receive a temperature probe. Babkes, however, due to the extent of their removable module would never be mistaken for Applicants intended device/apparatus. That is, Applicants are solving a problem which Babkes is not structurally capable of solving. In the instance of Applicants, the thermometry device/apparatus includes a housing defined by a cavity in which a hollow elongate isolation chamber is introduced. The chamber is a well-like member which is sized to retain a temperature probe. The construction of Applicants' design is to prevent a user from unwittingly inserting a

temperature probe into the cavity of the apparatus without the isolation chamber first being present therein. If a user were to insert a probe into the housing cavity without the isolation chamber being present, then it is possible the probe could be used for measuring temperature of a patient and then reinserted into the housing cavity along with resulting contamination. Without the isolation chamber, the chamber providing a fluid tight seal, the resulting contamination could extend to the apparatus electronics and cause internal damage. To that end, Applicants' apparatus includes a first switch assembly which detects whether the elongated isolation chamber is actually already in the housing cavity and is enabled only when the isolation chamber is actually in the cavity.

In addition, the apparatus further includes a second switch assembly that is enabled only when a probe is removed from the isolation chamber (probe well) that is already provided within the housing cavity. The thermometry apparatus is then only powered if BOTH switch assemblies are each enabled. In this manner, the apparatus can only be powered if a probe is removed from the apparatus and only if an isolation chamber is provided within the elongate cavity of the thermometry apparatus housing. As such, the device effectively tells the user when the isolation chamber is missing from the apparatus, causing the user to be alerted to the situation.

Applicants have amended Claim 1 to include the features of Claims 2 and 3 to more clearly recite the above structure. Claims 2 and 3 have been canceled. Support is found repletely in the present application, see paragraphs 0027-0029 and Figs. 3-5 of the present specification. Therefore, it is believed that no new matter has been added.

Applicants have also amended Claim 9 to include the features of Claims 10-12, now canceled in an effort to positively recite the above-noted features and to clearly distinguish and particularly point the present invention. Claims 10-12 have been canceled.

In summary, Babkes does not require, teach or remotely suggest the above-noted structure. To that end, Babkes does not teach a removable probe well/isolation chamber which can be removed from a cavity of the apparatus housing. The entire

module of the Babkes reference, including the housing cavity that retains the probe, is removed from the housing. This reference fails to introduce a separate probe well or isolation chamber that is removable from the elongate housing cavity. Put another way, when the module is removed from the housing, there is no way that a user could mistakenly insert a probe into the housing cavity since the cavity is absent from the apparatus. In addition and because Babkes does not have an isolation chamber that is separately removable from a housing cavity, this cited reference therefore also fails to disclose a first switch assembly that is enabled only when the isolation chamber is actually provided within the housing, meaning the switch assembly can be disabled if the chamber is removed therefrom. The only switch provided on Babkes relates to that when a probe is inserted into the cavity of the housing. Since critical structural features are clearly absent from this primary reference, it is not understood how there can be any anticipation of amended Claim 1 under the Statute. Reconsideration is respectfully requested.

Claims 4-8 and 13 are believed allowable for the same reasons since these claims depend from Claim 1. Reconsideration is respectfully requested.

As previously noted, independent Claim 9 has also been amended to more clearly and specifically recite the structure relative to the first and second switch assemblies as well as the structural differences between the apparatus housing, isolation chamber and cavity retaining BOTH the isolation chamber and the probe. No new matter has been added. Because Babkes fails to include or suggest an isolation chamber which is removable from a housing cavity and a switch assembly that detects the presence of the isolation chamber (not merely the probe) within the cavity, there can be no anticipation under the Statute. Moreover, this reference clearly does not teach or suggest the provision of first and second switch assemblies that are interconnected such that their mutual enablement is required in order to power the thermometry apparatus and solve or mitigate the problem relative to probe contamination/damage thereto. Claims 14 and 15 are also believed to be allowable for the same reasons. Reconsideration is respectfully requested.

The Examiner has also rejected Claims 1-15 based upon Knieriem et al. (U.S. Patent No. 6,827,488) under 35 USC §102(e). Applicants' disagree and therefore respectfully traverse this rejection based on the following.

Knieriem et al. '488 describes a temperature measuring apparatus which includes a housing, as well as an isolation chamber which is removable from the housing, the chamber being equipped to retain a temperature probe. However, this reference fails to include subject matter that is provided for in the present invention and therefore this reference also fails to anticipate under the Statute. A closer examination of the '488 reference is required to more clearly point out these differences.

This reference describes a single switch assembly, either a mechanical switch assembly or an optical switch assembly, that is provided relative to the isolation chamber (probe well). In the first embodiment, this switch is provided as a form of inwardly directed depression which is encountered by the probe as the probe is pushed into the receiving cavity of the isolation chamber. See Fig. 5 and Figs. 6-8 which indicates the movement of the switch member as the probe is moved into the receiving cavity. The remaining embodiment relates to an optical switch in which the isolation chamber includes a pair of windows 168 that are provided adjacent an emitter/detector pair, shown as 152/156. In this instance, the presence of the probe in the receiving cavity will block the light path between the emitter and detector and therefore also open a switch. There is no provision in this reference, however, for an indication when the probe well (isolation chamber) is removed. Put another way, due to the presence of the windows on the isolation chamber, the emitter detector pair operates precisely the same way whether or not the isolation chamber is present when a probe is placed into the housing cavity. There is no second switch assembly provided according to this reference, like the previously cited Babkes reference that signifies the presence of each of the isolation chamber AND the probe to enable working operation of the thermometry apparatus.

Therefore, the Knieriem invention could operate successfully without an isolation chamber by inserting a thermometry probe into the elongate housing cavity and then removing the probe for measuring a patient's temperature which would power the apparatus. Subsequently, the probe including any contamination from the patient would be returned to the housing cavity, the very problem Applicants are attempting to prevent by way of the present invention in which the user would be aware of the presence of an isolation chamber in the cavity when the probe is removed therefrom, wherein the isolation chamber provides a fluid tight seal such that the probe, even if contaminated could be returned to the isolation chamber following a temperature measurement. Knieriem et al. is simply not structurally equipped to solve Applicants' problem. Because Knieriem fails to include a first switch assembly which is enabled only when an isolation chamber is within the housing cavity and a second switch assembly which is enabled only when a probe is removed from an isolation chamber disposed within the housing cavity and in which the thermometry apparatus is only powered when each switch assembly is enabled, as now positively recited according to Claim 1, there can be no anticipation under the Statute. Claims 4- 8 and 13 are believed to be allowable for the same reasons since these claims depend from allowed Claim 1.

Claim 9 has also been similarly amended to positively recite that the apparatus is powered only if each switch assembly through detection of an isolation chamber in the housing cavity and removal of a probe from an isolation chamber that has been attached to the housing cavity. Because Knieriem et al. fails to recite, teach or otherwise describe this feature, there can be no anticipation under the Statute. Claims 14, 15 are believed to be allowable for the same reasons. Reconsideration is respectfully requested.

With regard to the objections noted to the specification and to the drawings, Applicants believe that the amended claims are responsive to the Examiner's comments. Applicants have eliminated the phraseology "an elongate hollow probe", "switch enabling said thermometry apparatus to operate only if said" and reinserted "isolation chamber" to be consistent with the specification. Applicants have

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amended Claims 1, 4, 5, 8, 9, 14 and 15 to make these clarifications. No new matter has been added. It is now believed these claims comport properly with the specification and drawings and withdrawal of these objections is respectfully requested.

In summary, it is believed that the above-captioned patent application is now in an allowable condition and such allowance is earnestly solicited.

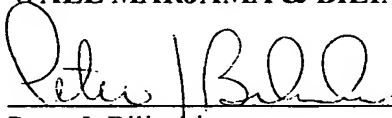
Should the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicants representative at the telephone number below.

The Director is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

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